General Films, Inc. *and* Glass, Molders, Pottery, Plastic and Allied Workers International Union, Local 45B, AFL–CIO–CLC. Cases 9–CA–26842, 9–CA–26976, 9–CA–27220, and 9–RC–15400

April 30, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On August 6, 1991, Administrative Law Judge Richard A. Scully issued the attached decision. The Respondent filed exceptions and a supporting brief.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, General Films, Inc., Covington, Ohio, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

IT IS FURTHER ORDERED that Case 9–RC–15400 is severed and remanded to the Regional Director for Region 9 with the direction that, within 14 days of this decision, he open and count the ballots of employees Michael Barga, Dennis Cantrell, and Mike Smith, serve upon the parties a revised tally of ballots, and thereafter issue the appropriate certification.

[1] The Respondent has requested oral argument. This request is denied as the record, the exceptions, and the brief adequately present the issues and the positions of the parties.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In his decision, the judge spelled Joan Supinger's name incorrectly as ''Suppinger.''

Eric A. Taylor, Esq., for the General Counsel.
Daniel C. Mccarthy Esq., of Greenwood, Indiana, for the Respondent.
Mary L. Crangle, Esq., of Haddonfield, New Jersey, for the Union.

DECISION

RICHARD A. SCULLY, Administrative Law Judge. On charges filed by Glass, Molders, Pottery, Plastics and Allied Workers International Union, Local 45B, AFL–CIO–CLC (the Union) on September 25 and November 6, 1989, and on January 30, 1990, the Regional Director for Region 9, National Labor Relations Board (the Board), issued a complaint on November 9, 1989, and consolidated amended complaints on December 21, 1989, and March 8, 1990, alleging that General Films, Inc. (the Respondent) committed certain violations of Section 8(a)(1), (3), and (4) of the National Labor Relations Act (the Act). The Respondent filed timely answers denying that it had committed any violation of the Act.

A hearing was held in Dayton, Ohio, on August 7 and 8, 1990, at which all parties were given full opportunity to participate, to examine and cross-examine witnesses and to present other evidence and arguments. Briefs submitted on behalf of all parties have been given due consideration. On the entire record and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

At all times material, the Respondent was a corporation engaged in the manufacture and sale of plastic packaging materials and related products at its facility in Covington, Ohio. During the 12-month period preceding November 1989, a representative period, the Respondent, in the course and conduct of its business, sold and distributed from its Covington, Ohio facility products, goods, and materials valued in excess of $50,000 directly to points located outside the State of Ohio. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning on Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent admits, and I find, that at all times material the Union was a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Respondent manufactures industrial packaging materials consisting of various types of plastic bags which are produced on machines in its extrusion department. Approximately 20 percent of its output undergoes further processing in its conversion department. Because of the continuous nature of the manufacturing process, the extrusion department runs 24 hours a day, 7 days a week, utilizing two work crews working 12-hour shifts. There are four crews in this department working a schedule of 3 days on and 2 days off. The converting department works two shifts per day, Monday through Friday.

The Union filed a petition seeking to represent certain of the Respondent's employees on September 30, 1988, and the Board conducted an election on November 15, 1988. After a hearing, the Board resolved challenges to the ballots of several employees, including four extrusion operators, by determining that they were not supervisors and were eligible to vote in the election. The Board also had determined that the Union's objections to the election should be sustained, resulting in another election being held on August 25, 1989. Thereafter, the Board overruled the Employer's challenges to the ballots of extrusion operators Michael Barga, Dennis

Cantrell, and Michael Smith and ordered that the challenge to the ballot of Joan Supinger be set for hearing.

B. *The 8(a)(1) and (3) Allegations*

The complaint alleges that the Respondent violated Section 8(a)(1) and (3) of the Act by issuing disciplinary reprimands to employees Michael Smith and Andrew Farrier, by suspending Farrier for 7 days and by discharging employee Timothy Chappie because of their protected activities and support for the Union. The Respondent contends that all of these actions were taken for cause. Under these circumstances, where the employer's motivation is an issue, the Respondent's actions must be analyzed in accordance with the test outlined by the Board in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (lst Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983). This requires that the General Counsel make a prima facie showing sufficient to support the inference that protected activity by its employees was a motivating factor in the Respondent's decision to take disciplinary action against them.

1. Andrew Farrier and Michael Smith

Smith testified that he contacted the Union about representing the Respondent's production and maintenance employees in June 1988. Thereafter, he solicited signatures on authorization cards and returned them to the Union. He testified that he wore a union button in the plant for over a year and was observed doing so by several supervisors. He attended the Board hearing on the challenged ballots and sat at the counsel table with the Union's representatives. Smith testified to several conversations with management personnel concerning his involvement with union organizing. In 1987, during an organizing drive by the Teamsters, he was asked by Supervisor Larry Weikert why he was attempting to organize only the ''downstairs people'' and why he felt a union was needed. At about the same time, Company President John Roeth asked him if he was doing the right thing by getting a union in there. Roeth also called him in about a week before the election in 1987 and asked what the employees wanted. Smith testified that on ''Employee Appreciation Day,'' about a month or two before the election in 1988, Roeth spoke to him in the plant, saying, that he saw they were going to bump heads again and he thought that he had kicked Smith's ass good enough the first time that he would not try it again. Roeth asked why Smith didn't just go ahead and quit if he was so unhappy with the place and Smith responded that he planned on retiring from there.

Andrew Farrier testified that he attended union meetings and that he indicated his support for the Union by wearing a union button on his jacket at the plant for 2 weeks and by displaying the words ''Union Yes, 45B'' on his tennis shoes which he wore to work everyday. About a week before the election in 1988, he had a conversation with Roeth in which he said he was sorry to hear that Farrier thought a union was needed to solve his problems. Farrier testified that he attended the Board hearing on the ballot challenges in April 1989 and sat with the Union's representatives. About a month later, Production Manager Norman Slade spoke to him in the warehouse at the plant. Slade told Farrier that he wasn't doing his work properly and that he was a bad employee. Slade said that Farrier had a bad attitude and that he didn't know anyone in his right mind that would take a whole day off to sit at a hearing that was none of his business. Slade also told Farrier that if he did not change his attitude he was going to write him up or worse.

On June 14, 1989,[1] the Respondent issued a written warning to Farrier for being in the plant without authorization during his nonworking time. The warning notice also stated that in the event of another similar violation he would be suspended for 7 days. Farrier had come into the plant during his off-hours to bring some sandwiches to Michael Smith who was working. In September, Farrier was issued a written warning and notice of a 7-day suspension for again being in the plant without permission during his nonwork time. Farrier had been on sick leave and came into the plant on September 19 to repay some money he owed Smith. As he was leaving he encountered Slade who was entering the plant. A day or two later while at the plant Farrier was called in by his Supervisor Larry Huber who gave him the warning and suspension notice. Farrier served the 7-day suspension before returning from sick leave in October. On September 21, Smith was issued a written warning and a notice of a 1-day suspension for allowing Farrier to come into the plant on September 19. Smith has never served the 1-day suspension.

The credible and uncontradicted testimony of Smith and Farrier establishes that they were active supporters of the Union and that the Respondent was aware of that support. I find that there is evidence of union animus on the part of the Respondent based on the Respondent's opposition to the Union's organizing campaign and Roeth's statements to both Smith and Farrier indicating his unhappiness with their support for the Union. I also find evidence of animus in Roeth's remark to Smith while discussing the Union that if he was unhappy working for the Respondent he should quit. The Board considers such statements to be unlawful threats of discharge since they imply that support for a union and continued employment with the employer are incompatible.[2] I also find evidence of union animus in Slade's remark to Farrier that he had a ''bad attitude'' during the same conversation in which he criticized Farrier for attending the hearing on election challenges. Although Slade said he did not recall saying anything to Farrier about attending the hearing, he did admit to having a discussion in which he criticized Farrier's work and threatened to write him up. Slade did not specifically deny referring to Farrier's attitude. I credit Farrier's account of the conversation which was quite detailed and believable and which Slade's testimony does not really contradict. I find that the conversation occurred as Farrier described it. Under the circumstances, it appears that the term ''attitude'' was being used by Slade as an indirect reference to Farrier's union activities or sympathies. See *Virginia Metalcrafters*, 158 NLRB 958, 961–962 (1966); *Winn-Dixie Greenville*, 157 NLRB 657, 662 (1966).

Based on this evidence, I find that the General Counsel has made out a prima facie case that the disciplinary actions

[1] Hereinafter, all dates are in 1989 unless otherwise noted.

[2] E.g., *Rolligon Corp.*, 254 NLRB 22 (1981); *Intertherm, Inc.*, 235 NLRB 693 fn. 6 (1978). Roeth's remark was not alleged to be a violation of the Act; however, even conduct which does not violate the Act can be used to show union animus on the part of a respondent. *Best Products Co.*, 236 NLRB 1024, 1025 (1978); *Sun Hardware Co.*, 173 NLRB 973 fn. 1 (1968).

against Smith and Farrier violated Section 8(a)(3). Under *Wright Line*, supra, the burden shifts to the Respondent to show that it would have taken the same action even in the absence of protected activity.

The Respondent contends that Farrier was disciplined for violating a longstanding rule prohibiting employees from coming into the plant without permission when they were not working. There is undisputed evidence that Michael Smith was given a written warning for violating this rule in February 1988. Extrusion Department Manager Larry Huber testified that this rule has been in effect for at least the 4 years that he has been at the plant. He testified that in May, prior to the time that Farrier received his first warning, he was informed that Farrier was coming into the plant during his off-hours without permission. Huber spoke to Smith and told him that he was not to let Farrier come in when he was not working. His testimony is unclear as to whether he also spoke to Farrier about it. However, at that time Huber posted a notice, dated May 18, on a bulletin board where he frequently posted things stating that no one who was not working was to visit the plant during off-hours without permission except during a specified period on Thursdays for picking up paychecks. When he subsequently learned that Farrier has been in the plant without permission, he gave him a written warning and told him that if it happened again he would be given a 7-day suspension. He also spoke to Smith about it, but did not give him a warning at that time. When Farrier came into the plant a second time without permission, Huber suspended him for 7 days.

Michael Smith testified that the notice concerning the rule was not posted on the bulletin board until a month after Farrier was written up and suspended for violating it in September. According to Smith, when the notice was posted someone wrote the date it was posted on the notice which was later crossed out by the Respondent. Farrier also testified that the notice was not posted at the time he was first written up and was not put up until late October or November. He said that when he received the first warning he complained about it because no such rule was posted and other people were doing the same thing. Based on this, counsel for the General Counsel contends that Farrier was disciplined for violating an unpublished rule. I do not agree. I found Huber to be a credible witness and I believed his testimony that he had posted a notice about the rule in May. Huber credibly testified that at the time employee Randy Pritchard was given a written warning for violating the rule in June, the notice was on the bulletin board and he pointed it out to Pritchard. At a later time when someone removed the notice, he got a copy from the office files and reposted it. I find that the evidence establishes that the Respondent had in force a rule prohibiting employees from being in the plant during off-hours without permission and that the rule was posted in the plant prior to the time Farrier was first disciplined for violating it. Consequently, the Board's decision in *Northern Wire Corp.*, 291 NLRB 727 (1988), cited by the General Counsel, is inapposite.

Counsel for the General Counsel also contends that the rule against being in the plant during nonworking time was applied to Farrier in an unduly harsh and disparate manner. I do not find that the evidence establishes that to be the case. It is clear that when Farrier was given the warning for violating the rule in June, he was specifically told that if he violated the rule again he would be given a suspension. The fact that Huber testified that he felt 2 or 3 days would have been enough is immaterial. He testified that Slade determined the length of the suspension and that he informed Farrier that it would be 7 days, if there were another violation, at the time he gave him the warning. There is no evidence tending to show that the length of the suspension was inordinate given Farrier's flagrant disregard of the rule and his first warning or that other employees were treated more leniently. The fact that when Pritchard was given a written warning for violating the same rule the warning form he received did not state the penalty for a subsequent offense does not amount to more lenient treatment. Huber's credible and uncontradicted testimony was that at the time Pritchard was given the warning he told Pritchard that a second violation would result in a 7-day suspension. That statement was not a belated assertion, as the General Counsel suggests, but was a part of his direct testimony. In any event, there is no evidence that Pritchard or anyone else received a lesser penalty than Farrier for a second violation of the rule.

The evidence also fails to establish that the Respondent applied the rule in a disparate manner. Although Smith and Farrier testified about other employees being in the plant without permission and not being disciplined, neither established that he had knowledge that they were, in fact, there without permission or, if they were, that a supervisor was aware of their presence. Further, none of the instances they described involved circumstances comparable to those which led to the disciplinary action against Farrier. There was evidence that employee Wilbur Sink was often in the plant outside of his regular working hours. However, the credible testimony of Slade and Huber was that Sink was the Company's maintenance man who was authorized to be in the plant at any time it was necessary to repair or work on equipment. Farrier testified that he had pointed out to Huber that employees Ted Hardenbrook and Tim Garland were in the plant during off-hours without anything being done. Huber credibly testified that he only recalled Farrier asking about Garland who was in the plant during the daytime. He asked Garland what he was doing there and was told that he was there to get some insurance papers in the office. Garland asked Huber if he could come back and visit and Huber told him that he could not. As discussed above, Randy Pritchard was reported to have come into the plant without permission on a Sunday and he was given a written warning. Although the alleged visits to the plant by employee Tony Slade, the son of Supervisor Norman Slade, were not explained by any of the Respondent's witnesses, in the absence of any evidence establishing that he did not have permission to be there, I find that his presence in the plant, without more, is insufficient to establish that Farrier was the victim of disparate treatment. On the contrary, it appears that Farrier was disciplined after he had deliberately entered the plant during his off-hours without permission with the knowledge that he was violating the rule and exposing himself to further disciplinary action. It also appears that Smith was given a warning but not suspended after he took no action to prevent Farrier from visiting him at the plant after being specifically told not to allow Farrier to do so. Considering all of the circumstances, I find that the Respondent has established that it would have taken the same action with respect to Smith

and Farrier even in the absence of prounion activity on their part. I shall recommend that these allegations be dismissed.

2. Timothy Chappie

Timothy Chappie was employed by the Respondent as an assistant operator in the extrusion department and worked on the same shift as Michael Smith. Chappie testified that he was a union supporter, that he had signed an authorization card for the Union, attended some union meetings, wore a union button to the plant one time and handed out union leaflets outside the plant on one occasion before the election in 1988.

On the night of January 18, 1990, Chappie had some difficulty with the machinery that he was operating which resulted in his producing a large amount of scrap. Chappie testified that as his frustration with the machinery grew he wrote a series of comments on an inspection data sheet (IDS) which is used to record information concerning production and any problems encountered. According to Chappie, he wrote the following on the IDS that night: ''We need new management or burn it down and start over again without Jack, Norm and LW'' and ''The edge guide is a piece of shit.'' Sometime during the night Chappie crossed out the entire comment about management and the word ''shit'' because ''I didn't think they would appreciate me criticizing management.'' When Chappie reported for work on January 22, his next scheduled workday, he was summoned to Roeth's office where Roeth, Slade, and Weikert were present. Roeth showed him the IDS and asked him if he knew who had written the comments that had been crossed out. Chappie said that he did not. Roeth said that Chappie's name was on the paper and that it came from his shift so that someone on that shift had written it. Roeth said that because Chappie would not say who wrote the comments he was being terminated and handed him a termination notice. Roeth also told him if he knew who did it to give him a call.

Smith testified that on January 22 he was called to Roeth's office, shown the IDS with the crossed out comments and asked if he has written them or if he knew who had. When Smith said that he did not, Roeth told him what he thought the comments were and said that someone was going to be fired for writing them and it was probably going to be Tim Chappie because his name was on the IDS. Smith was sent to another office to wait and was later called back to Roeth's office. Roeth told him that they considered the writing on the IDS to be a serious threat and that Chappie was going to take the blame although he had not confessed unless someone else admitted doing it. Later that night Smith had a conversation with Weikert and Ron Chappie, Tim Chappie's brother. Smith testified that Weikert talked about Tim Chappie being dismissed and said that he knew Smith's shift had problems because of Smith's involvement with the Union and that he had spoken to Roeth about it and told him to be more fair as he had been unfair with them just because of Smith's involvement with the Union.

The evidence establishes that Chappie was a union supporter and that the Respondent was aware of that fact. Slade, although denying that he had actually seen Chappie and his brother handing out leaflets for the Union outside the plant, admitted that it was brought to his attention at the time and that he was probably aware of Chappie's involvement in the leafletting. Beyond that knowledge on the Respondent's part, there is little to connect Chappie's discharge to the limited union activity in which he had engaged over a year before. I do not credit Smith's testimony that on the night of Chappie's discharge Weikert made a remark to Smith and Ron Chappie that Roeth had been unfair to the D shift, which included Tim Chappie, because of their support for the Union. Weikert testified that he spoke to them that night but said that he told them that while he did not always agree with Roeth's disciplinary actions, he felt Chappie had made a threat that should be treated as a serious matter and that his discharge was justified. He also said that he asked them to get past the problems they had and to get on with the business of making plastic. He denied saying anything about telling Roeth that he needed to be more fair with their shift. Ron Chappie's testimony tends to corroborate that of Smith concerning Weikert's alleged comment about Roeth's being unfair to their shift. According to Chappie, Weikert said that he had told Roeth he was coming down hard on the D shift and ''to back off.'' However, he failed to mention Weikert's making any reference to the Union.

Counsel for the General Counsel argues that ''it borders on the ludicrous'' for the Respondent to construe what Chappie wrote on the IDS as a threat; consequently, his discharge on that basis was a pretext and that this is further evidence of unlawful motivation. The Board recognizes that the weakness of an employer's reasons for an adverse personnel action can be ''a factor raising a suspicion of unlawful motivation.'' *Raysel-IDE, Inc.*, 284 NLRB 879, 880 (1987); *Briarwood Hilton*, 222 NLRB 986 (1976). I do not agree that the Respondent was unjustified in considering the writing on the IDS to be a threat. Any evaluation of the Respondent's actions must look at them from its perspective and consider them in the light of the information available to it at the time. The writing on the IDS is difficult to make out given the fact that it has been crossed out, but the words ''this place'' and ''burn it down'' can be discerned. It simply cannot be said, as the General Counsel contends, that it is apparent that it is nothing more than criticism of management by a temporarily disgruntled employee. Roeth credibly testified that when he was shown the IDS, he interpreted what he could make out as a threat to burn down the plant. He was ''appalled'' that an employee would make such a threat and would write it on a production paper. He considered it a serious matter and felt that even if the writer had had second thoughts and crossed it out, the next time he got that angry he might carry out the threat. Roeth said that he did not think it was a chance he could afford to take.

It may well be that had Chappie told Roeth exactly what he had written on the IDS and why, when he was confronted with it, Roeth's fears that the plant was in danger could have been allayed. However, when he was given that opportunity, Chappie denied any knowledge of the writing or who had put it there, in the face of substantial circumstantial evidence that he had written it. If anything, his actions could only serve to increase Roeth's apprehension. Under the circumstances, I find that it cannot be said that the Respondent's reaction to the writing on the IDS or treating it as a serious threat was unjustified or unreasonable.

Notwithstanding the evidence of the Respondent's knowledge of Chappie's support for the Union and the evidence of animus on its part, I find that the General Counsel has not made out a prima facie case that Chappie's discharge was

motivated by that animus. On the contrary, it appears the Respondent found itself faced with a potentially dangerous situation and took reasonable and appropriate action to protect itself. The situation arose entirely from Chappie's juvenile actions and was exacerbated by his refusal to acknowledge and explain those actions. I find there is no evidence of any connection between this matter and the prounion activity of Chappie or any of the other employees. I shall recommend that this allegation be dismissed.

3. The 8(a)(1), (3), and (4) allegations

The ballots of the Respondent's four extrusion operators were challenged by the Board agent at the first election because their names were not on the list of eligible voters. The Respondent maintained that the operators were supervisors within the meaning of Section 2(11) of the Act. While the ballot challenges were pending before the Board, on March 13, the Respondent issued a memorandum to each of the operators which purportedly outlined his ''authority, responsibilities and opportunities'' as a ''shift supervisor.'' This memorandum notwithstanding, the operators were determined not to be supervisors in the hearing officer's report, to which no exceptions were taken, and their ballots were opened and counted. In the second election, the Respondent challenged the ballots of extrusion operators Michael Barga, Michael Smith, and Dennis Cantrell on the grounds that they were supervisors. The Regional Director found that there was no evidence to cast any doubt on the accuracy of the previous determination that the operators were not supervisors and concluded that they were not. The Respondent filed exceptions to that determination which were overruled by the Board. While its exceptions were pending, the Respondent distributed another copy of the memorandum concerning the responsibilities of a shift supervisor to each of the operators and to two employees in the converting department along with a letter from Roeth, dated October 31, which stated, inter alia, that while the Respondent considered them to be supervisors, some of them had ''continued to deny that area of [their] responsibility.'' The employees were asked to indicate whether they wanted to remain as supervisors. If any did not, he or she would be reassigned ''to a shift that has an opening for you with appropriate adjustment in your pay and benefits commensurate with that position.''

Michael Smith testified that he was called into Roeth's office and was asked to sign a paper acknowledging that he had read the list of supervisory responsibilities and accepted those responsibilities as the supervisor of his shift. Roeth told him that if he did not sign he would be given another job and that it would probably be as a helper because there were no assistant operator jobs available. Smith told Roeth that he did not want to sign because he wanted to be in the Union. A week or so later, Huber came to him and told him that he had to sign that day. Smith was hesitant but did so because he did not want to give up the extra money he was making as an operator. Michael Barga testified that he was called into Roeth's office where several management officials were present and asked to sign a similar paper. Weikert told him if he did not accept the supervisory position he would be demoted, he would have to take a cut in pay and he could end up on a different shift. Barga asked for a week to think about it. A few days later Huber asked if he had made a decision. Barga said he signed the paper and accepted the position because he could not afford a cut in pay and did not want to go back to the night shift.

Smith testified that he had been an operator for a year and a half and had previously served in that position at another of the Respondent's plants. He testified that at the time that he received the memorandum outlining the shift supervisor's responsibilities he had not previously exercised any of them with the exception of the first which called for him to ''manage people and production . . . to maximize quality production'' and another which called for attendance at management meetings. That did not change after he received the memorandum. Barga testified that he had been an operator for 6 or 7 years and that he had not performed any of the duties outlined in the memorandum except for being responsible for production on his shift and attending meetings. Jeffrey Kiser became an operator in October when Cantrell left. He had worked as an assistant operator for 2 years and had filled in as an operator many times. Kiser testified that he had performed none of the duties outlined in the memorandum except that relating to being responsible for production on his shift since becoming an operator or before when he filled in in that capacity.

The operators' credible testimony indicates that the ''management meetings'' they attended after the memorandum was issued concerned routine matters and that their recommendations at these meetings were paid little attention. Smith described one meeting in which the purchase of a new bagging machine was discussed. All of the operators agreed that the one they already had was no good and they should not get another similar one. The Respondent went ahead and purchased the second machine anyway. Their testimony also indicated that on the few occasions that they were called on to perform the duties outlined in the memorandum it was usually at the direction of one of the management officials and not on their own initiative.

The Respondent offered some generalized testimony from Roeth to the effect that its extrusion department was expanding and that a new and expensive piece of equipment had been installed and that this had resulted in an expansion of the extrusion operators' responsibilities. However, there was nothing that tended to dispute or discredit the mutually corroborative testimony of the three operators that they did not exercise most of the duties and responsibilities listed in the memorandum referred to above. Likewise, there was nothing in terms of specific detail to support Roeth's self-serving testimony that the operators were failing to carry out their alleged supervisory responsibilities. There was no evidence that any of the operators were counseled or disciplined for this alleged dereliction of duty. It does not appear that the warning given to Smith at the time Farrier was suspended for being in the plant without permission was premised on his failure to perform any supervisory function. On the contrary, Huber, who gave Smith the warning, testified that Smith was warned for disregarding Huber's specific instruction that he was not to allow anyone to come into the plant without first getting permission from Huber, Slade, or Weikert. If anything, the incident points up the lack of any real discretionary authority on the part of the operators.

The burden of proving supervisory status is on the party alleging that such status exists. *Soil Engineering Co.*, 269 NLRB 55 (1984); *RAHCO, Inc.*, 265 NLRB 235, 247 (1982). In this case it is the Respondent. In making determinations

concerning such status, it is important not to construe that status too broadly lest an employee be denied rights which the Act is intended to protect. *Westinghouse Electric Corp. v. NLRB*, 424 F.2d 1151, 1158 (7th Cir. l970). I find that the Respondent has not established that the operators were supervisors within the meaning of Section 2(11) of the Act. From all that appears, the operators merely acted a conduits relaying orders from management to the other employees on their shifts. They exercised no independent judgment or discretionary authority and had no responsibilities beyond seeing that work continued in an orderly fashion when management was not present.

I find that the operators were not supervisors at the time the memorandum designating them as such was issued in March and that there had been no significant change in their status or duties up to the time that they were required to sign papers, in which they acknowledged that they were supervisors, under threat of being demoted to lower paying jobs. The same is true of Michael King who worked in the conversion department. The evidence fails to establish that he performed any supervisory functions which required the exercise of independent judgment. King testified that before he signed the paper acknowledging his supervisory status he had not exercised any of the responsibilities listed in the attached memorandum. Accordingly, I find that the Respondent's insistence that the operators and King sign these acknowledgements had no legitimate purpose. The Respondent's posttrial assertion that in so doing it was lawfully altering its supervisory structure and transferring certain employees out of the bargaining unit amounts to a sham given the evidence that there was no significant change in the operators' duties or responsibilities. It is also contrary to Roeth's testimony that the memorandum merely amounted to a ''reaffirmation of the duties and responsibilities that the people were already supposed to be carrying out.''

Based on the foregoing, I find that the Respondent violated Section 8(a)(1) of the Act by unlawfully coercing employees Michael Smith, Jeffrey Kiser, Michael Barga, and Michael King[3] to sign papers acknowledging that they are supervisors while they continued to perform their old, nonsupervisory jobs. *Regency Manor Nursing Home*, 275 NLRB 1261, 1277 (1985). Under the circumstances, it is unnecessary to decide whether the Respondent's actions also constituted violations of Section 8(a)(3) and (4).

IV. BALLOT CHALLENGE IN CASE 9–RC–15400

The Union challenged the ballot of Joan Suppinger on the ground that she is a supervisor within the meaning of the Act. Suppinger has been employed by the Respondent for 23 years and has been in the position of ''converting supervisor'' for the past 3 years. I find that the evidence establishes that Suppinger has the authority to effectively recommend the hiring, firing, and discipline of other employees and that she responsibly directs the employees under her using her independent judgment.

In her testimony, Suppinger obviously attempted to downplay her supervisory role and indicated that all of her actions were taken only at the direction of Plant Manager Norman Slade. She testified that if there is an opening in the converting department she talks to the applicants and if she considers an applicant a good prospect for the job she tells Slade and sees if he wants her to hire the person. According to Slade, when there is an opening in converting, he takes any applications that are on hand and gives them to Suppinger to contact and interview any likely prospects. Once Suppinger finds someone she feels is good enough, he authorizes their hiring on the basis of Suppinger's recommendation. Neither Suppinger or Slade could recall any instance in which he had rejected someone Suppinger had recommended for hiring.

The record contains warning notices signed by Suppinger which indicate that she had suspended former employee Robert Ward on several occasions for tardiness and absenteeism. Suppinger testified that while she would normally discuss writing up an employee with Slade before doing so, he has always deferred to her judgment, telling her, if she thinks they should be written up she should do so. Slade testified that it is Suppinger's responsibility to discipline her employees although they usually discuss what form of discipline is appropriate. If there is a problem with someone in her department, Suppinger ''usually takes it upon herself to do something about it,'' but if he sees something wrong or that needs to be corrected, he brings it to Suppinger's attention and does not usually deal directly with her employees. There is also a dismissal notice in the record, signed by Suppinger, which states that she had dismissed Ward ''because of insubordination toward your supervisor and failure to follow instructions.'' Suppinger testified that she learned that Ward had worked two consecutive shifts, something the Respondent does not permit and about which she had warned him before. She reported this to Slade and recommended that Ward be fired because he had been warned about it before. Slade went along with her recommendation. Although Slade's testimony was that he had discovered that Ward had worked two shifts and decided to fire him, I credit Suppinger's version since she appeared to have a much better recollection of what actually happened.

Suppinger's testimony implied that she had little say in directing the work of the employees in her department. She said she consulted with Slade about what machines to put employees on and later said the employees choose the machines they want to work on based on seniority. She also testified that she has no authority to give raises and has never recommended any employee for a raise. I do not credit this testimony. Slade testified that Suppinger assigns the work to her employees and that he has no input as to what persons she puts on particular machines or what jobs she assigns them. Robert Ward testified that when he worked in the converting department he was not assigned to the same job or location every day, that Suppinger made the daily work assignments and sometimes changed his assignments during the course of the day. He said that Suppinger checked the work of all department employees about once every hour. Slade testified that Suppinger has input into decisions concerning wage raises of employees in her department and that he would not give a raise without first discussing it with her.

It is not necessary for an individual to possess all of the criteria listed in Section 2(11) of the Act in order to be considered a supervisor. Possession of one or more of these cri-

[3] I find there was no violation in the case of Joan Suppinger because she was a statutory supervisor as is discussed, infra. I find there is insufficient evidence to determine whether there was a violation in the case of operator Phil Chappie.

teria is sufficient to establish an individual's supervisory status and the Board will not engage in ''balancing the supervisory aspects of the job with the nonsupervisory in order to determine [such] status.'' *Gurabo Lace Mills*, 249 NLRB 658 (1980). I find that the evidence establishes that Suppinger has authority to effectively recommend the hiring, firing, and discipline of the employees in her department and that she exercises independent judgment in directing the activities of those employees on a daily basis. Although Michael King has the same title as Suppinger, on another shift in the same department, the evidence does not indicate that he has the same degree of authority as Suppinger. Based on the foregoing, I shall recommend that the challenge to the ballot of Joan Suppinger be sustained on the ground that she is a supervisor within the meaning of Section 2(11) of the Act.

CONCLUSIONS OF LAW

1. The Respondent, General Films, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by coercively requiring employees Michael Barga, Michael Smith, Jeffrey Kiser, and Michael King to acknowledge that they are supervisors, while remaining in the same nonsupervisory positions they previously held, in an effort to undermine support for the Union.

4. The foregoing unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent did not engage in those unfair labor practices alleged in the consolidated complaint not specifically found herein.

6. The Union's challenge to the ballot of Joan Suppinger on the ground that she is a statutory supervisor has been sustained.

THE REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent coercively required certain of its employees to acknowledge that they are supervisors, under threats of demotion to lower paying jobs, while they remained in the same nonsupervisory positions they previously held, I shall recommend that it be required to rescind its letter of October 31, 1989, to those employees and to advise them that this is being done and that they will not be obligated to accept any lesser positions or loss of pay as a result.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[4]

[4] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ORDER

The Respondent, General Films, Inc., Covington, Ohio, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Coercively requiring nonsupervisory employees to acknowledge that they are supervisors, while they remain in the same nonsupervisory positions they previously held, in order to undermine support for the Union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its letter of October 31, 1989, to employees Michael Barga, Michael Smith, Jeffrey Kiser, and Michael King, in which they were designated as supervisors, advise them that this is being done and that they will not be obligated to accept any lesser positions or loss of pay as a result.

(b) Post at its facility in Covington, Ohio, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the consolidated complaint is dismissed insofar as it alleges violations of the Act not specifically found herein.

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT coercively require employees to acknowledge that they are supervisors, while they remain in the same nonsupervisory positions they previously held, in order to undermine support for Glass, Molders, Pottery, Plastics and Allied Workers International Union, Local 45B, AFL–CIO–CLC.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind our letters of October 31, 1989, to Michael Barga, Michael Smith, Jeffrey Kiser, and Michael King, designating them as supervisors and WE WILL advise them that this is being done and that they will not be obligated to accept any lesser positions or loss of pay as a result.

GENERAL FILMS, INC.